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ABSTRACT

This report from the New York State Comptroller's Office details problems with the State's approach to school facilities in recent years, describes why serious physical deficiencies remain unaddressed despite greatly increased spending, and makes recommendations for improvement. The report concludes that state policy for school facilities has vacillated in recent years, leaving an area where long-term planning and a consistent approach are most needed without either. Recommendations include: (1) ending annual manipulations to funding; (2) new approaches to creating classroom space, including public-private partnerships, leaseback agreements, and shared-use facilities; and (3) changes to New York City's financing arrangements. (EV)

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School Construction and Building Aid: An On-Again, Off-Again Priority

H. Carl McCall
New York State Comptroller

December 2001

SUMMARY

It is a given that all children should attend safe, clean, and well-equipped schools. Many school improvement issues are directly tied to facilities, including the need to reduce class size, ensure a safe and orderly environment and provide instruction in specialized areas such as science and technology. Educational reform is vital to economic development, and as such, school facilities are simply too important to be treated in the haphazard manner they have been. Even in today's difficult fiscal environment the State could do much to improve conditions by adopting a rational and consistent approach.

This year in particular has been a disaster for school facilities. Beginning in January, with a cut proposed by the Executive, building projects were put on hold in districts across the State. Although budget negotiators scrambled to find "painless" ways to cut State funding, the changes ultimately enacted will force school districts to finance building projects for the maximum term allowed by the local finance law. This "assumed amortization" system was not fully understood before it was enacted, and the State Education Department has still not been able to provide estimates of aid payable to school districts.

This report details the problems with the State's approach to school facilities in recent years, describes why serious physical deficiencies remain un-addressed despite greatly increased spending, and makes recommendations for improvement.

During the 1990's poor school building conditions were documented throughout New York State and the nation. Old, overcrowded buildings suffering from decades of "deferred maintenance" were in need of basic repairs, as well as drastically behind in technology. It was generally understood that local school districts would need additional help from the State, especially needy school districts with the worst conditions.

A series of actions were taken, but despite temporary aid increases, many of the worst problems were not addressed. There were many false starts, including a bond act that failed, a new aid program that fell far short of expectations, and additional funding for maintenance that was removed this year. Moreover, the State has now retreated from enrichments in "building aid" – the long-standing reimbursement formula that shares in the costs of local school building projects.

State policy for school facilities has vacillated in recent years. In this area where long-term planning and a consistent approach are most needed, they have been most absent.

A temporary 10 percent hike in building aid reimbursement rates stimulated many districts to launch expansion and modernization projects between 1998 and 2000. This building boom caused local spending and State reimbursements to soar, but in a perverse reaction policy shifted and building aid is now being cut. During this

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year's extraordinary budget impasse school building projects were held up across the State, and the schools that responded to the earlier incentive are now facing cutbacks that their taxpayers will have to pick up.

Although decisions about school buildings are made at the local level, the State has a strong regulatory role, setting standards, approving projects for reimbursement and imposing local planning, inspection and reporting requirements. Local decisions are very much driven by State funding, the prime example being the recent boom.

Unfortunately, many of the school districts with the most serious building deficiencies did not participate fully in the boom period. Needy districts often cannot take advantage of building aid because they cannot increase capital spending in the first instance. For example, most of the worst problems are in cities that have debt ceilings limiting capital spending, as well as many competing needs.

School districts are being compelled to take fiscally unwise actions such as stretching out their borrowing to the maximum term and refinancing even when it costs them money.

State policy for school facilities has vacillated in recent years. In this area where long-term planning and a consistent approach are most needed, they have been most absent. Incentives have been enacted and then removed. Promised new funding failed to materialize. A huge backlog was allowed to develop in the State Education Department's project approvals.

Each year new wrinkles are added to the already cumbersome and convoluted reimbursement process, most of which are designed solely to save the State money in the short term. For example, by aiding districts "as if" they are paying their debt over a longer term, State aid payments are initially reduced (though they will increase over the longer term). This is characterized as a transparent change with no financial impact on local taxpayers, but the practical result is that school districts are being compelled to take fiscally unwise actions such as stretching out their borrowing to the maximum term and refinancing debt even when it costs them money.

Summary of Recommendations:

- ✓ Annual manipulations to funding must end. State policies and processing delays cannot be allowed to stand in the way of needed building projects.
- ✓ School districts must be able to count on a steady funding stream from the State when they make long-term commitments. A rational, sustainable long-term approach to building aid must be established that successfully targets dollars to needs.
- ✓ New approaches to create classroom space should be more aggressively explored, including public-private partnerships, leaseback agreements, and combined use facilities.
- ✓ Mandate relief and other reforms can ensure that taxpayers get the maximum benefit from their investments in school infrastructure.
- ✓ In New York City the mayor should control the SCA and permanent debt reform should replace the need for backdoor borrowing using the TFA.

Vacillating Policies

In the mid-1990's a series of reports highlighted poor conditions in school buildings throughout the State, as well as overcrowding.[1] A decades-long decline in the school-age population had reversed, and early education programs, class-size reduction efforts and new technology needs were all putting pressure on facilities. At that time the State Education Department (SED) estimated that about $15 billion would be needed over five years to bring local facilities up to adequate conditions.[2] There was wide agreement that the State would need to provide additional funding.

The State has long contributed to local school building projects through building aid, which pays a portion of local costs through a reimbursement formula. A series of changes have been made in building aid since 1997, first to increase it and then to decrease it. Other changes have involved new funding streams, such as minor maintenance aid and the RESCUE program,[3] both of which are discussed in subsequent sections. This report focuses primarily on building aid, however, as it overwhelms the other programs in both size and impact.

Besides being inconsistent, State policies have also not effectively addressed the most severe needs. Poorly designed aid programs and ineffective governance structures have allowed needs in the largest cities to go unmet, even as overall spending has soared.

This year projects were held up across the State as the Governor's proposal to cap building aid was considered.[4] Although that idea was eventually rejected, another proposal was enacted, adversely affecting local school district debt structures.

SCHOOL FACILITES TIMELINE

1995/1996
Widespread recognition of school facilities problems. Consensus for the State to help.

1997
Building aid enrichments enacted (to begin in 1998). $2.4 billion School Facilities Bond Act placed on the ballot but rejected by voters, partly because the legislation did not specify how the money would be spent.

1998
Building aid reimbursement increased by 10% for all districts and a new "minor maintenance aid" program begins. RESCUE legislation promises $500 million for school facilities over 4 years as well as improved inspections and planning; funding is vetoed by the Governor.

1999
Building boom is much larger than expected and concern rises over the State's reimbursement costs. RESCUE funding is partially restored with a $145 million appropriation, increased to $195 million the following year. Despite appropriations, only $65 million has been paid to school districts as of December 2001.

2000
10% incentive largely eliminated. Other changes slow down reimbursement for new debt service. Even with these cutbacks, building aid continues to increase as local debt service costs rise.

2001
Governor proposes capping building aid and "assumed amortization" – stretching out debt to reduce annual aid payments. Local projects sidelined by Governor's proposal during unprecedented year of deadlock. In October Legislature enacts modified version of assumed amortization to begin in 2002. Minor maintenance aid is ended.

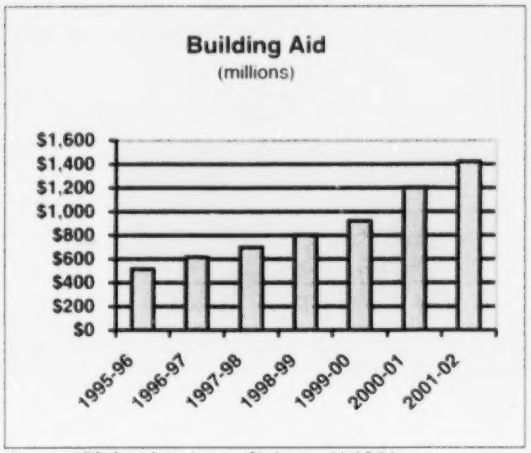
Building Aid

Building aid is one of the oldest school aid formulas, dating back to the early 1960's, and pays for a portion of local school facilities costs. Most school building projects are financed by borrowing, and public votes are held to approve school construction bonds. In the big cities where the municipal government is responsible for funding schools there is no public vote, but capital spending is governed by a debt limit.

Building aid covers debt service costs, or direct costs if a district is not borrowing for a building project. Costs for leased space and major capital repairs are also reimbursed. To be eligible for building aid, projects must be approved by the State Education Department (SED), based on space needs, building capacities and other factors. SED also imposes a cost ceiling for aid calculated based on the type of building, its capacity, and (since 1998) on regional labor costs.

Building aid is paid using an "aid ratio" intended to provide a greater share of aid for needy school districts, and less for those that are better able to support their needs. This aid ratio is based on a school district's property wealth, through an equalized formula designed to give schools a higher share of aid if they have less local property wealth. Under the basic formula, an average-wealth district has an aid ratio of 49 percent. For poorer districts the ratio would be higher (up to 95 percent), and for wealthier districts aid declines, even to zero at more than twice the average wealth level (in theory only, because other provisions prevent this from happening).

Although the original intent was to provide aid in an equalizing manner, many changes



Source: SED Local Assistance Estimates 11/15/01

and exceptions were added to building aid over the years that somewhat counter this goal. For example, school districts are given the choice of using any of the aid ratios calculated for building aid since the 1981-82 school year. Some districts are eligible to use a specially calculated ratio incorporating income measures, and districts that build as part of a reorganization or merger also receive special benefits.

The end result of the exceptions and special calculations is that most districts receive a fairly high reimbursement percentage. The average reimbursement rate is close to 70 percent – very different from the formula's intended 49 percent. There are many inequities in this approach, because wealth statistics change over time and there have also been some substantial data inaccuracies over the period from which school districts may choose.

For needy districts, however, the formula may not even be having its intended effect. Many of these districts benefit far less than others from the choice of aid ratios allowed. In addition, because it is a reimbursement formula, in many cases needy districts

cannot take full advantage of building aid. They may not be able to increase capital spending as much as other districts that are better off, or have less debt to begin with. In addition, cities and small city school districts have debt ceilings that limit their capital spending while other districts do not.

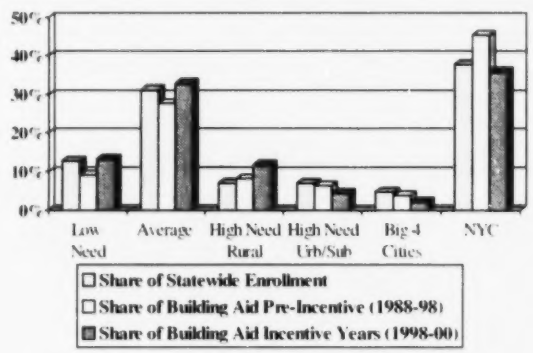
Incentive Drives Boom

In a change enacted with the 1998-99 budget, all school districts were eligible for an additional 10 percent reimbursement for building projects approved after July 1, 1998. The incentive was added to their existing aid ratio, and a minimum aid ratio of 10 percent was established that had not existed in building aid before.

It is clear that the additional 10 percent was enormously successful as an incentive. When this change took effect in 1998 there were great needs in districts across the State. Since the incentive was put in place, building aid has risen from $802 million in 1998-99 to an estimated $1.42 billion today. During the 2000-01 school year, the State Education Department approved $3.7 billion in school district construction projects, more than twice the $1.4 billion approved in 1998-99. More than 4,700 new classrooms were added in 1999-00 alone, compared with 1,500 in the previous year.

However, a major criticism of the 10 percent incentive was that it was completely untargeted. All districts and all projects qualified for the additional funding, regardless of the need for the project or the relative wealth or need of the school district. And while in theory the new funding was equally available to all districts, it may have been less effective in needy schools because they were least able to increase their capital spending to take advantage of it. Much of the new construction and renovations were done in the wealthiest districts.

Shares of Enrollment and Building Aid For Major Groups of School Districts Before and During 10% Incentive



The incentive funding initially applied equally to swimming pools and classroom space (although legislation was enacted as part of the 2000-01 State budget to exclude swimming pools).

The preceding chart contrasts shares of enrollment and building aid for various groups of school districts (using SED classifications based on fiscal capacity and student needs). As the data reveal, the 10 percent incentive appears to have more heavily benefited high- and average-wealth districts, particularly in comparison to high-need districts in cities and suburbs. Rural districts also have benefited significantly.

Low-need, primarily wealthy, districts received a share of the incentive funding slightly greater than their share of enrollment, as did average-need schools and high-need rural districts. In contrast, the high-need urban and suburban schools got a share of the incentive aid much smaller than their share of enrollment. Changes in the shares of building aid received before and after the provision of the 10 percent incentive are also illustrative. While the shares of aid received by low- and average-need districts were improved after the incentives were added, the opposite occurred for large city districts and other high-need districts in small cities and suburbs.

This result is not entirely surprising, because the incentive was neither targeted to district financial need nor the relative importance of building projects. The less needy school districts were undoubtedly in a better position to approve new capital spending. Aid provided solely on a reimbursement basis often reinforces existing financial disparities because districts without resources to spend in the first instance may not be able to take full advantage of it. In short, those who can spend can get, but those who cannot are out of luck.

The relative failure of the 10 percent incentive to address some of the most serious facilities needs has been acknowledged by the State Board of Regents, and they are attempting to develop new formula mechanisms to deal with it. Unfortunately, the past year's budget discussions were mainly concerned with cutting back the growing building aid entitlement. There was not much focus on equity in the formula or any attempt to ensure that State funding targeted the most critical problems.

There have been many reports that the building boom increased costs by driving up the demand for a limited number of contractors qualified to do this type of work.[5] In addition, the boom is associated with a great backlog in approval of building projects at SED. In many cases, projects were delayed long enough for the building aid rules to change, thus substantially altering the local tax impact.

During the peak of the boom, project proposals were subject to a 24-week delay before approval, an average that has fallen to about 17 weeks today according to SED. These delays, in combination with generally rising costs, have resulted in large increases in the costs expected for many projects.

The blame for the backlog, however, does not lie with the surge in project applications, which should have been anticipated. It lies with a continuing refusal to adequately staff SED's facilities planning office. This office had been understaffed even prior to enactment of the incentive. The regulatory components of the RESCUE program

(discussed below) also increased their workload tremendously, and yet these changes were enacted without providing any additional funding for their implementation.

Despite repeated and urgent requests from the Regents to add more staff for SED's facilities office, no action was taken until the Legislature added $100,000 in last year's enacted budget, but this was only one-fifth of the $500,000 requested. With a combination of the new funding, and some reallocation of resources, SED was finally able to add five positions only recently. While these new positions will help to reduce the backlog, it will not come close to eliminating it. Many school districts believe that the backlog was allowed to develop intentionally, to delay reimbursements and slow down the growth in building aid.

Pendulum Swings for Building Aid

The additional 10 percent building aid incentive appears to have been a victim of its own success. It spurred such growth in local building projects that the State's reaction was to largely eliminate the incentive for all projects approved after July 1, 2000, as well as to take other measures to reduce building aid overall.

2000-01 Budget

The 2000-01 budget included two major changes to reduce aid payments. One was a Governor's proposal that revised the timeframe for reimbursing newly issued debt, delaying aid payments and encouraging districts to structure their debt such that the first payment would not be made until the year following the issuance of bonds. Although this change delayed a large portion of building aid payments and improved predictability of the State's liabilities, it also had the impact of raising interest costs for many districts.

The second major change was the virtual elimination of the 10 percent incentive for building projects approved after July 1, 2000. In a somewhat misleading approach, the building aid statutes were changed in manner that technically preserved the 10 percent incentive, but changed its method of application in such a way that the benefit was wholly eliminated for a majority of school districts and reduced for most others.

Here is the technical description of the situation. For projects approved between July 1, 1998 and July 1, 2000, aid continues to be based on each district's selected aid ratio plus 10 percent. For projects after July 1, 2000, districts can use the higher of their current aid ratio, or their selected aid ratio used previously (i.e., choosing among ratios calculated back to 1981-82) but *minus 10 percent*. Following that election, school districts could receive the 10 percent additional payment. Therefore, if districts use a selected aid ratio, they subtract 10 percent before adding 10 percent.

Here is the effect. For 56 percent of the State's 680 school districts, this means simply that the 10 percent incentive is no longer available (because their "selected" aid ratios were more than 10 percent above their current aid ratios). For another 38 percent of districts the benefit was much reduced, although not completely eliminated. For aid payments this school year, 17 districts that are actually using current year aid ratios can still benefit from the full 10 percent incentive. In addition, 54 high-wealth districts can benefit from the minimum aid ratio added with the incentive.

In another change enacted in 2000-01, multiyear cost allowances were implemented, based on the period of probable usefulness (or PPU) of major projects. This change was designed to ensure that school districts would properly maintain their facilities, because State aid for a facility or a system (e.g., a roof or boiler) would not be available again within the expected life of the project.

2001-02 Budget

This year's budget went even further in cutting back on building aid. Moreover, because the budget negotiations remained deadlocked until October, and cuts had been proposed in January, school building projects across the State were delayed while districts waited to see what would happen to building aid. The impact of this year's situation on aid in the coming years is still unknown, but it is very likely that slowdown in projects resulting from the budget uncertainty will be dramatic.

In his 2001-02 Executive Budget, the Governor proposed two major changes to reduce building aid. One was a "prioritized pool" method of funding new projects, which was not enacted. The other was an "assumed amortization" reimbursement approach which was enacted with some alterations.

The priority pool was to have affected aid for new projects only (and therefore did not impact aid in 2001-02, since there is a lag built into the building aid reimbursements). Under the proposal new projects would no longer be aided using a reimbursement-based entitlement system. Instead, a fixed pool of funds would be made available based upon the relative priority of the project and the relative need of the school district carrying it out.

While the concept of using a prioritized approach is worth exploring further, the Executive's proposal unfortunately came at the expense of a large cut in aid. The proposal was also never fully described, and was fundamentally flawed because no district could know how much it would receive (or even if it would receive aid) at the time a project was being considered. Since local consideration of building projects is highly dependent on State funding, this proposal fundamentally interfered with local decision-making.

As a result of the Governor's proposal, and an extremely late State budget, districts remained unsure about whether new building projects would be eligible for aid from January though October 2002. SED even posted a notice on its website warning districts to consider the potential impact of the Governor's proposals before proceeding with construction plans. The ultimate impact of this situation is still not clear, but it probably stalled hundreds of projects.[6]

The second of the Executive's building aid proposals was for building aid to be based on an "assumed amortization schedule" rather than actual debt service payments. A delayed and slightly modified version of this proposal was enacted by the Legislature in October. This approach spreads out building aid payments over many years, forcing school districts to refinance their debt. It reduces State costs in the short run but raises interest costs over the long run, increasing both local and State costs.

Under the assumed amortization approach building aid would be reduced for any

projects that districts financed over a time period shorter than the maximum allowable under State law (e.g., 30 years for new construction, 20 years for major reconstruction or additions, and 15 years for renovations). For all projects currently financed for shorter periods, school districts would have to refinance to align their debt service with the new, slower reimbursements, or else bear the expense themselves by raising property taxes.

Although several descriptions of the enacted budget claim that it will allow school districts to only refinance the state-aided portion of their building projects, it is unlikely that any will do so, since building projects are financed as a whole, not as separate State and local portions. The practical impact of the assumed amortization approach will be to force school districts statewide to always use the maximum term for building projects and to refinance any current debt issued for less than the maximum term, thus stretching payments into the future and paying greater interest costs over the long term.

This virtual requirement to use the maximum finance period will further disadvantage city school districts facing d[illegible] limits because they will not be able to retire their debt as quickly and will consequently be able to afford less capital spending in the future.

The building aid changes enacted were contrived toward the end of the budget negotiations, and their impact is still very unclear. For example, the State Education Department has not been able to estimate the impact of the building aid changes and has still not provided the usual computer printouts of aid payable to school districts, even for the current school year. SED has promised a technical memorandum on the new building aid statutes, but as of this writing none has been issued. One school district organization has noted that "even Albany staffers are unable to interpret how the administration of the new amortization schedules is going to be managed."[7]

In November of each year SED issues estimates of aid payments due in the coming school year, under the many aid formulas as they exist in current law. This year, because of the assumed amortization approach, they have not been able to provide even a statewide estimate of the cost for school building aid in 2002-03. Building aid is one of the largest aid categories, and represents 10 percent of the 2001-02 school year total. The combined effect of the assumed amortization approach and the building slowdown resulting from a year when the basic formula was in question will decrease this aid stream substantially, and having little or no information on this effect as the State moves into the 2002-03 budget cycle is a major liability.

Two Programs to Supplement Building Aid

In 1997 and 1998 two new school facilities programs were introduced to supplement the traditional school building aid formula: minor maintenance aid and RESCUE. Both were Assembly initiatives that have been targeted by the Executive for cuts, which has undermined their effectiveness as incentives. Neither program has been able to effectively target the most serious facilities needs.

RESCUE

RESCUE (REbuilding SChools to Uphold Education) was enacted in 1998 essentially to replace the statewide bond act defeated in

the previous year. The 1998-99 budget included statutory language implementing the new program, as well as an appropriation of $500 million, which was to be spent over four years, and funded through public authority (backdoor) borrowing.

In the 1998-99 budget the Governor vetoed the $500 million in funding, although the program remained in law, including many regulatory changes. In 1999-00, RESCUE received an appropriation of $145 million, although it was not clear what time period this appropriation was for (i.e., one year or four years). In the following year's budget another $50 million was provided for the program.

RESCUE appropriations are allocated among school districts based solely on their share of statewide public and nonpublic school enrollment. This method does not target the funds either to critical facilities needs or to districts based on their fiscal capacity, and the use of counts of nonpublic pupils for public school facilities aid is also somewhat perplexing.

School aid computer runs in 1999-00 and 2000-01 listed the RESCUE amounts potentially available to districts, which then had to apply for the money under a series of conditions. RESCUE funding could be used for a variety of projects and could supplement building aid, but the combination of building aid and RESCUE cannot exceed 98 percent of the approved costs. As of this date, four years after enactment of the program, only $65 million of the $195 million appropriated for RESCUE has been paid out.

Although it was initially funded at a much lower level, RESCUE was originally envisioned as taking the place of a $2.4 billion School Facilities Bond Act rejected by the voters in 1997. Interestingly, within the next few years, spurred on by the building aid incentive, local bonding for schools far surpassed the amount proposed in even in the original bond act, much more so than the proposed RESCUE funding. In 1998, 1999 and 2000, school district bond issues for facilities exceeded $7 billion.

In addition to creating a new aid program, the RESCUE legislation added statutory requirements for local school building inventories, inspections, and improved capital planning, as well as a detailed and up-to-date statewide database of building conditions.

The implementation of these new reporting recommendations has been much delayed, in part because the RESCUE funding was delayed, but also because SED did not receive any additional staffing to implement the new requirements. Implementing regulations were not adopted by SED until October 1999. These regulations call for schools to complete a building conditions survey by November 2000, and submit results to SED by January 2001. It appears that most school districts have completed comprehensive inspections as mandated, but delays have occurred at SED, and as of this date they have not released any statewide data on conditions or needs.

Minor Maintenance

In 1997, the Legislature enacted a new funding program for minor maintenance,[8] to help encourage districts to make repairs and perform capital maintenance in order to mitigate the need for extensive capital renovation or rehabilitation for such buildings in the future. As the funds were

intended to generate new activities, there was a maintenance-of-effort provision. This program responded to the long-standing perception that the building aid system might have the perverse effect of encouraging districts to avoid maintenance until major problems became eligible for state building aid.

Minor maintenance aid began at an annual level of $50 million in 1998-99 and was scheduled to grow to $80 million in the 2001-02 school year (ironically, this was the year it was eliminated). Moreover, the funding was allocated on the basis of aggregate data on average facilities ages and enrollment growth in previous periods, and local fiscal conditions were not taken into account.

The extent to which this funding, while it was available, spurred better maintenance of school buildings is unclear. There is anecdotal evidence that many districts used the funding to offset already planned activities, and it is generally accepted that the maintenance of effort provision was unenforceable. On the other hand, there were also many new maintenance projects tied to the new funding. At the time the program was enacted, the average apportionment was only about 10 percent of what districts were reporting spending on maintenance.

Big City Schools

The need for adequate facilities is of particular concern in the State's largest five cities — New York, Buffalo, Rochester, Syracuse and Yonkers. These cities have the oldest buildings, are least able to invest in school building maintenance and updates, have the greatest classroom shortages, and the most trouble locating new sites for building schools or even adding on to schools.

These big five cities are the only group of districts receiving much less in building aid than their share of enrollment. Although they enroll over 42 percent of students statewide, the big cities received less than 33 percent of building aid during the incentive period.

A report from the Educational Priorities Panel has documented how the big cities receive less-than-average aid though the building aid formula and significantly less than districts of similar wealth. For example, for the period from 1992 to 1999, on a per-pupil basis, New York City received less than half the allocation in building aid than districts outside the big cities received.[9]

A large part of this building aid deficit for the big cities stems from their inability to commit the same level of resource to capital spending. Unlike school districts in the rest of the State, the big five city school districts do not need voter approval for bond issuances or the establishment of capital reserve funds. However, in the big five cities, school boards are "fiscally dependant" upon the city governments, and it is these governments, as opposed to boards of education or school chancellors, that control the amount of funding available. Big city schools must compete for funding against other municipal budgets for police, fire, sanitation, transportation and social services.

New York City

New York City is the largest school district in the State, where 38 percent of the State's public schoolchildren are enrolled. The City also has some of the most difficult facilities

issues in the State and a unique governance structure, including a state-local public authority, the School Construction Authority (SCA), to carry out school building projects.

There have been serious problems with accountability among the several agencies with responsibilities for New York City school facilities. Most recently, a $2.3 billion shortfall in the Board of Education's capital budget has jeopardized needed projects across the City.

While a full examination of these issues is beyond the scope of this report, there are numerous audits and other reports from the State Comptroller's Office that have addressed them in some detail.

In addition, the Comptroller has called for changes in the governance of the SCA. Since the City's capital plan and bonding for both school and municipal purposes are inextricably linked, the Comptroller has called for the Mayor to be made fully responsible for the City's school construction process and the SCA. The mixed responsibility for school facilities has led to a lack of accountability and there is a tendency for the actors involved to shift blame from one office to the other. The Governor's use of his Moreland Act powers to investigate New York City school facilities issues is a prime example of this effect.[10]

Debt Limits

As described earlier, most school construction projects are financed by debt, and cities and small city school districts have constitutional debt ceilings that limit their capital spending. SED research has shown that in many high-need districts debt limits were a major barrier to the intended stimulative impact of the school building aid incentive.

The big five cities have constitutional debt limits that apply to overall indebtedness, including both school and municipal purposes. The debt limit is expressed as a percentage of the full value of their taxable real property (a five-year average is used). In New York City, the limit is 10 percent of full value, and in the other big four cities it is 9 percent. The big cities may exclude from the debt limit the portion of any bond to be reimbursed through building aid.

As of fiscal year 2000, New York City had used 89 percent of its debt limit, Buffalo 63 percent, Syracuse and Rochester 61 percent and Yonkers 30 percent. Although some of these percentages may seem comfortably below the limit, several of these cities are bumping against their limits as they face the need to carry out major reconstruction of their existing facilities and build many new schools.

For New York City, a Transitional Finance Authority (TFA) has been established to help the City finance its capital plan. As a State public authority, the TFA borrowing is outside of the City's debt limit, and the TFA debt limit is set by the State Legislature. The Comptroller has argued for a more permanent solution by using a debt limit that takes into account the City's diversified revenue base (e.g., including income and or sales, rather than simply taxable property value).[11]

Although they are fiscally independent governmental units, small city school districts also have debt limits that apply to school district borrowing. Small city schools were governed differently from other

districts historically, but today they are virtually identical in all respects, such as voting on their budgets and capital projects, but with the significant exception of having restrictive constitutional debt limits. Small city school districts have debt limits for their school building debt equal to 5 percent of their 5-year average full value.

For fiscal years ending in 2000, the small city school districts used an average of 37 percent of their debt limits; ten districts used more than 75 percent. Small cities are allowed to exceed their limits for specific projects if approved by at least 60 percent of their voters, as well as the Commissioner of Education and the State Comptroller. Such exclusions occur on occasion, and have recently increased dramatically. In 2001 there were eight requests approved – this is more than occurred in the entire preceding decade.

Non-city school districts do have statutory debt limits, but they are set at 10 percent of their current full value (which is usually greater, as property values usually increase). In addition, the small cities, unlike the big cities or the non-cities, cannot exclude the portion of their debt reimbursed by building aid. There is no longer any rationale for having different debt provisions for small city school districts, and statutory and constitutional provisions should be altered to provide them with equal treatment.

Mandate Relief

Mandate relief can also help reduce the cost of school construction and rehabilitation. Two requirements often cited as being especially onerous are asbestos remediation requirements and the Wicks Law. The Comptroller has urged that measures to loosen the scope of these mandates be considered to maximize the limited funds available for school facilities.

Under the Wicks Law, school districts are required to award at least three separate contracts for construction projects valued at over $50,000. The Law requires separate plans, bids and contracts for HVAC, electrical and plumbing. Each school district must thus coordinate the work of these contractors, a difficult task for small districts with only occasional construction. For some districts, the inability to effectively manage the various contractors may lead to cost overruns and delayed completion of projects. Exemption from Wicks usually generates significant savings. Several studies over the years report savings of 10 to 30 percent on overall construction costs.

Public/Private Partnerships

Many districts throughout the nation, especially large city districts, are working with private companies and non-profit organizations to build new schools. In addition to gaining private expertise and flexibility, these projects can take advantage of private capital financing.

In 1996 legislation was passed enabling the city school district of Niagara Falls to contract with a private entity to construct and finance a new high school.

The Schoolhouse Foundation, a nonprofit organization in New York City, has proposed selling tax-exempt bonds to private investors through the City's IDA to build three new schools without using any of the Board of Education's construction budget. The buildings would be leased to the City to cover the interest and principal on the bonds 15-20 years, after which time the

schools would be turned over to the City for a nominal fee, debt-free.

Shared Use Facilities

In New York City a special public authority, the Education Construction Fund (ECF), was created in the 1960's to construct combined occupancy projects. Since its inception, the ECF has developed 13 projects. The non-school portions of these projects generally have been residential, although there were two commercial projects. The authority had been dormant for more than two decades until 1996 when it undertook a joint project with the Battery Park City Authority to build a mixed-use school/residential project.

The Board of Education has been exploring this option more aggressively in recent years, seeking out developers interested in constructing mixed-use facilities on City-owned land.

Pension Fund

Recently, the State Comptroller convened a meeting of representatives from public pension funds across the country worth more than $750 billion. The purpose of the meeting was to establish an agenda for investment in the nation's infrastructure including its schools. Several options are being explored that would help state and local governments leverage the additional resources needed to meet the needs of the 21st century.

Federal Programs

The federal government has never been a major provider of financial support for school construction, but several recent plans have centered on tax credits and other ways to help districts — especially poor districts — leverage funding. Regrettably, no progress was made on any of these plans in the recent federal education legislation.

Qualified Zone Academy Bonds (QZABs): A small federal program providing tax credit interest subsidies for special bonds issued in federally designated "empowerment zones." QZABs are available for schools in partnership with businesses (which must supply a 10 percent matching share), and can be used for building rehabilitation and repair, academic equipment or other uses. Obstacles have included designation of empowerment zones, and finding business sponsors and qualified lenders that want the tax credits. Although they have been available for four years, New York City was only just recently able to take advantage of $30 million in funding under the program.

Infrastructure banks: A House bill would create "infrastructure banks," or state or multi-state regional banks that would provide schools with low-interest loans, loan guarantees, credit enhancements to reduce interest costs or other assistance. Instead of directly financing school construction or repairs, the federal government would provide start-up money for these banks of $2.5 billion over five years. This would enable all public schools, including charter schools, to leverage far more money in state, local and private financing.

Emergency School Repair and Renovation: In last year's federal budget, an emergency school repair and renovation program provided $1.2 billion, from which New York State was allocated $105 million. Last year's funds have not yet been allocated by SED, and the program was not renewed at the federal level.

RECOMMENDATIONS

The Comptroller has recommended a number of ways to improve school facilities conditions.

- ✓ Annual manipulations to funding must end. It is inexcusable for the State to be unable to describe its building aid system or to provide aid estimates to school districts.

- ✓ The State should adopt a rational and sustainable long-term approach. School districts must be able to count on a steady funding stream from the State when they make long-term commitments.

- ✓ Innovative approaches to create new facilities should be aggressively explored, including public-private partnerships, leaseback agreements, and combined use facilities.

- ✓ The State Education Department's Facilities Planning Office must be adequately staffed. Processing delays cannot be allowed to stand in the way of needed building projects.

- ✓ A reformed building aid system should do a better job of targeting dollars to need.

- ✓ Mandate relief can help to ensure that taxpayers get the maximum benefit from their investments in school infrastructure. Actions to lower the cost of school construction and rehabilitation should be considered, including state regulations on asbestos remediation and the Wicks Law.

- ✓ Since the New York City's capital plan and bonding for both school and municipal purposes are inextricably linked, the Comptroller has called for the Mayor to be made fully responsible for the City's school construction process and the SCA.

- ✓ New York City's debt situation is currently being dealt with through the Transitional Finance Authority (TFA), with borrowing outside of the City's debt limit. The Comptroller has argued for a more permanent solution by using a debt limit that takes into account the City's diversified revenue base (e.g., including income and or sales, rather than simply taxable property value).

- ✓ Debt provisions for small city school districts should be conformed with those applying to other school districts that vote on their budgets and school building bond acts.

- ✓ Organizational and fiscal incentives leading to maintenance deferral should be countered by a combination of better enforcement of regulatory requirements, and improved capital planning and reporting. Although the RESCUE legislation promised to address these issues, implementation is not yet complete.

- ✓ The federal government can play a helpful role through direct funding as well as innovative programs to provide new financing sources.

Notes

[1] *School Facilities: Profiles of School Conditions by State*, U.S. General Accounting Office (June 1996), GAO/HEHS-96-148. This study found that 90 percent of New York's public schools required an upgrade or repair to bring them into good overall condition. *Report of the Commission on School Facilities and Maintenance Reform* (June 1995), also known as the Levy Commission, which documented abysmal conditions in New York City school buildings. An overview of these and other reports can be found in: *School Facilities: Conditions, Problems and Solutions*, Office of the State Comptroller (October 1997).

[2] The $15 billion estimate was made through rough judgments on the basis of incomplete information, and has not been updated since that time, although new reporting requirements are being implemented. See the discussion of these requirements under the RESCUE program.

[3] REbuilding SChools to Uphold Education, an Assembly initiative intended to supplement regular building aid.

[4] See for example: *Construction-aid Proposal Paralyzes School Projects*, Rochester Democrat and Chronicle (February 27, 2001), or *School Projects Stalled in Albany*, Westchester Journal News (May 20, 2001).

[5] See for example, *Stalemate in Albany Stalls School Projects*, The Buffalo News (July 1,2001).

[6] See *Construction-aid Proposal Paralyzes School Projects*, Rochester Democrat and Chronicle (February 27, 2001); the estimate that hundreds of projects were delayed has been confirmed with state government sources.

[7] Nassau-Suffolk School Boards Association, *Newsline* (Volume No. 49 – October 2001).

[8] The program was actually a reprise of a funding provided in the 1994-95 budget, but removed the following year.

[9] *Building Aid Shortchanges the Big Cities*, Educational Priorities Panel (February 2001).

[10] See *McCall Releases School Construction Follow-Up Review* Office of the State Comptroller (March 11, 1999).

[11] *How Debt Finances New York City's Capital Program* Office of the State Comptroller (October 1997).

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